

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5007 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PREMJIBHAI @ PREMJI PAHELWAN

Versus

POLICE COMMISSIONER

Appearance:

Mr.H.R.Prajapati, Advocate (appointed) for the
Petitioner.

Mr.U.R.Bhatt, Assistant Govt Pleader for the
respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 31/07/96

ORAL JUDGEMENT

By order dated 12-12-1996 passed by the
Commissioner of Police, Surat City, in exercise of his
powers under sub-section (1) of section 3 of the Gujarat
Prevention of Anti-Social Activities Act, 1985,

Premjibhai @ Premji Pahelvan Kathiyavadi has been detained. The said detenu made an application from the Jail to this Court making grievance about his detention. It was treated by this Court (Coram:K.J,Vaidya,J) as a suo-motu petition and that is how it has come before this Court for judicial determination.

With a view to assist this Court and to plead the cause of the detenu, this Court requested Mr.H.R.Prajapati , learned Advocate, to appear for the petitioner in this matter which request Mr. Prajapati readily accepted and assisted this Court.

As can be seen from the grounds of detention supplied to the detenu, the detaining authority has placed reliance on three criminal cases for offences punishable under Chapters XVI and XVII of the Indian Penal Code.They are :

C.R.no.165/95 registered on 17-5-96

C.R.No.166/95 registered on 25-5-96,and

C.R.No.187/96 registered on 5-6-96.

All these cases are pending at the trial stage. Over and above these criminal cases, the detaining authority has also placed reliance on the statements of three witnesses of the locality where the detenu is alleged to have been carrying on his anti-social and naferious activities. Considering this material, the detaining authority has recorded a finding that the detenu is a "dangerous person" within the meaning of section 2 (c) of the said Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order it was necessary to pass the order of detention against him and, therefore, the impugned order is passed.

Mr.Prajapati , learned Advocate , invited my attention to the grounds of detention as well as the statements of the concerned witnesses and submitted that the allegations made in the criminal cases registered against the detenu are yet to be proved at the trial and, assuming that the allegations made therein as well as in the statements of the witnesses are true, in that case also, the detenu can be branded as a menace to the society and his activities can be considered prejudicial to the maintenance of law and order and not prejudicial to the maintenance of public order.Therefore, the subjective satisfaction arrived at by the detaining authority that with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order is not genuine.

Having perused the allegations made in the

criminal cases and the statements of the witnesses, I am of the opinion that even if the allegations levelled against the detenu are accepted to be true, they are as a result of the individual criminal cases and the same can be dealt with by the competent criminal Court in the criminal cases registered against him. Considering the cumulative effect of the pending cases and the statements of the witnesses, it is difficult to infer that because of the alleged activities carried on by the detenu, a situation was created whereby the public order and even tempo of the citizens of the locality was disturbed. The statements of the witnesses are stereo-type, too vague and general in nature. Having considered the same, in my opinion, it is not necessary to reproduce the allegations made therein and to deal with the same. Thus, considering the above material, I am of the opinion that there is no genuine subjective satisfaction on the part of the detaining authority in recording the finding that the alleged activities of the detenu were causing or likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. Therefore the continued detention of the detenu has become illegal and is vitiated.

In the result, this petition is allowed. The detention order dated 12-12-95 is quashed and set aside. The detenu Premjibhai @ Premji Pahelvan Kathiyavadi is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs. Writ to be sent to the concerned Jail to-day.

True copy